IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT

THE HON'BLE MS. JUSTICE G. ROHINI

WRIT PETITION NO.12214 OF 1997
AND
WRIT PETITION NO.32810 OF 1997

In W.P.NO.12214 OF 1997 :

Between:
The Managing Director The A.P.State Coop. Bank Ltd.,
4-1-441, Troop Bazar, Hyderabad-500 001
(Earlier The A.P.Coop. Central Agricultural Development Bank Ltd., now merged with the AP.State Coop.Bank)

..... PETITIONER

AND

1 The Labour Court-II 4th Floor,
Chandra Vihar MJ Road,
Hyderabad rep.by Presiding Officer
2 U.Narasimha S/o.Ramalingam
1-86, Sai Nilayam Pochammabagh Colony
Saroornagar, Rangareddy Dist.[Died per Lrs. R.R. 4 to 8].
3 The Primary Agricultural Development Bank Ltd., Armoor, Nizamabad Dt. (Now merged with the District Cooperative Central Bank Ltd., Nizamabad)
4 U. Jana Bai, W/o. Deceased U. Narasimha,
H.No. 1-86, Sai Nilayam, Pochammabagh Colony, Saroornagar, R.R.District.
5 N. Vanaja Rani, D/o. the deceased U. Narasimha.
H.No. 1-86, Sai Nilayam, Pochammabagh Colony, Saroornagar, R.R.District.
6 M. Padamaja, D/o. the deceased U. Narasimha.
H.No. 1-86, Sai Nilayam, Pochammabagh Colony, Saroornagar, R.R.District.
7 U. Srinivas, S/o. the deceased U. Narasimha.
H.No. 1-86, Sai Nilayam, Pochammabagh Colony, Saroornagar, R.R.District.
8 U. Naveen Kumar, S/o. the deceased U. Narasimha.
H.No. 1-86, Sai Nilayam, Pochammabagh Colony, Saroornagar, R.R.District.

[R.R. 4 to 8 are brought on record as per LRs. R-2 as per Court Order dated 1.3.2004 in WPMP.NO.56/2004]

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue notice call for the records and quash and set aside the award made in ID.No.124/1993 Dt.23/11/1996 on the file of the Labour Court-II, Hyderabad by issuing a writ of certiorari or any other appropriate writ, order or direction as the Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.NAGESWAR SREE

Counsel for the Respondents : GP FOR LABOUR

Counsel for the 2nd respondent : Mr. V.Jagapati
Counsel for the 3rd respondent : Mr. Koka Satyanarayana

In W.P.NO.32810 OF 1997 :

Between:

1 U.Narasimha (died) S/o.Ramalingam
Saroornagar Rangareddy Dist
2 U.Jana Bai W/o.late Sri.U.Narasimha
R/o.Sai Nilayam Pochammabagh Colony
Saroornagar RR.Dist
3 U.Sreenivas S/o.late Sri.U.Narasimha
R/o.Sai Nilayam Pochammabagh Colony
Saroornagar RR.Dist .
(Petitioners 2 and 3 are brought on record as LRs
of Petitioner No.1 as per Court order dated 11-04-2001
In W.P.M.P.No.8275 of 2001)

..... PETITIONERS

AND

1 The Presiding Officer Labour Court-II
Chandra Vihar, MJ Road, Hyderabad
2 The Managing Director, A.P.State Coop. Bank Ltd.,
4-1-441, Troop Bazar, Hyderabad
3 The Nizamabad District Coop. Central Bank Nizamabad,
Nizamabad Dist
rep.by its Chairman

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of certiorari, calling for the records relating to passing of Award in ID.No.124/93, Dt.23/11/1996 notified in GO.Rt.No.867 Labour Employment, Training and Factories (Labour-I) Department dt.21/04/1997 from the file of the 1st respondent and after perusing it quash the same in so far as it relates to denial of full back wages to the petitioner from the date of his removal and pass such other order.

Counsel for the Petitioners : MR.V.JAGAPATHI

Counsel for the Respondents : G.P. FOR LABOUR

Counsel for the 2nd respondent : Mr. P.Nageswara Sree

Counsel for the 3rd respondent: Mr. Koka Satyanarayana

The Court Made the Following :

COMMON ORDER :

These two Writ Petitions which arise out of the Award dated 23-11-1996 in I.D.No.124 of 1993 on the file of the Labour Court-II, Hyderabad are heard together and disposed of by this common order.

The second respondent in W.P.No.12214 of 1997 was appointed as a supervisor in the Agricultural Development Bank, Devarakonda in the year 1966. Subsequently, he was transferred to Koonavaram and from there to Armoor. While he was serving at Armoor, disciplinary proceedings were initiated against him on the ground of certain irregularities alleged to be committed in disbursement of loans while working at Koonavaram Agricultural Development Bank. After conducting due enquiry, by order dated 30-07-1986 he was dismissed from service. The Appeal preferred by the 2nd respondent was also dismissed by the Board of Directors of the A.P. Cooperative Central Agricultural Development Bank vide proceedings dated 28-05-1990. Aggrieved by the same, the second respondent raised an industrial dispute which was taken up as I.D.No.124 of 1993. The

Labour Court by Award dated 23-11-1996 set aside the order of dismissal and directed reinstatement with continuity of service, but granted only 25% of back-wages. Challenging the said Award, the A.P. State Cooperative Bank, Hyderabad filed W.P.No.12214 of 1997. The second respondent filed W.P.No.32810 of 1997 so far as the denial of 75% of back-wages is concerned.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel appearing for the A.P. State Cooperative Central Bank i.e., the petitioner in W.P.No.12214 of 1997 vehemently contended that the Labour Court committed a grave error in granting the relief to the workman without recording any finding that the order of dismissal was arbitrary or illegal. It is further contended that the impugned award is cryptic and not supported by any reasons and particularly since the Labour Court failed to consider the objection raised with regard to the maintainability of the proceedings against A.P. Cooperative Central Agricultural Development Bank which was already abolished, the impugned award cannot be sustained and liable to be set aside.

On the other hand, the learned Counsel for the second respondent who is the petitioner in W.P.No.32810 of 1997 while submitting that the Labour Court is justified in setting aside the order of dismissal and directing reinstatement, further contended that having regard to the facts and circumstances of the case, the Labour Court ought to have granted full back-wages. He contends that there is absolutely no justifiable reason to deny 75% of back-wages.

For proper appreciation of the rival contentions raised by the parties, it is necessary to note the facts in detail.

Initially, all the Primary Agricultural Development Banks were

under the control of A.P. Cooperative Central Agricultural Development Bank and the power of disciplinary action was totally vested with it. Subsequently, by virtue of the Amendment Act 51 of 1976, Section 114-A was inserted into the A.P. Cooperative Societies Act, 1964 empowering the Board of Directors of the A.P. Cooperative Central Agricultural Development Bank to constitute a centralised service of certain categories of employees of Agricultural Development Banks. As per Rule 70 of the A.P. Cooperative Societies Rules, 1964 as amended by G.O.Ms.No.409, dated 29-06-1979, the post of Supervisor was one of the categories of posts specified in the centralized service. In pursuance of the same, by proceedings dated 26-08-1981 issued by the Managing Director of A.P. Cooperative Central Agricultural Development Bank, the 2nd respondent was absorbed as Supervisor in the centralised service with effect from 01-07-1980. By that date he was working at Koonavaram Agricultural Development Bank and subsequently vide proceedings dated 04-10-1982 he was transferred to the Primary Agricultural Development Bank, Nalgonda in the centralized service cadre. Thereafter, on promotion as Accountant, he was posted at the Agricultural Development Bank, Armoor in Nizamabad District vide proceedings dated 10-01-1985. In the meanwhile, while he was working at Nalgonda, a charge-memo dated 02-08-1984 was issued to him alleging commission of serious irregularities in disbursement of loans resulting in non-supply of certain accessories to the loanees at Koonavaram Agricultural Development Bank which amounts to gross misconduct. Two charges were framed against him and he was called upon to explain as to why disciplinary action should not be taken against him in terms of Regulation Nos.112 and 114 of the Regulations governing the service conditions of the employees of Agricultural Development Banks under the centralized services. The 2nd respondent failed to submit any explanation. Consequently, an enquiry officer was appointed and the enquiry report was submitted on 21-11-1985. The said enquiry report shows that the 2nd respondent appeared before the

enquiry officer and also cross-examined one of the witnesses of the management. Though he furnished a list of witnesses to be examined by him and also produced three witnesses before the enquiry officer, in spite of several opportunities afforded, he failed to participate in the further enquiry. Consequently, the enquiry was concluded and on the basis of material available on record the enquiry officer submitted a detailed report holding that both the charges are proved and that the 2nd respondent was guilty of fraud and dishonesty which amounts to gross misconduct under Regulation No.112(m) of the Regulations governing the Service Conditions of the employees of the Agricultural Development Banks under the Centralized Service Cadre. The enquiry officer also expressed that he shall be made jointly and severally liable for the value of the material which was not supplied to the loanees which was assessed at Rs.16,020/- in addition to Rs.15,000/- towards the monetary loss caused to the Bank. In pursuance of the same, the Appointment Committee of the Bank passed a resolution dated 29-04-1986 proposing the punishment of dismissal from service and to recover a sum of Rs.31,020/- with interest at 12% till the date of payment. Accordingly, a show-cause notice dated 17-05-1986 was issued to the 2nd respondent calling upon him to show-cause why the punishment proposed should not be imposed. The 2nd respondent submitted his explanation dated 23-06-1986. The explanation was considered by the Appointment Committee of the Bank and it was resolved to confirm the punishment of dismissal from service besides recovering the amount of Rs.31,020/- together with interest at 12%. The said decision was communicated to the 2nd respondent vide proceedings of the Managing Director of the A.P. Cooperative Central Agricultural Development Bank Limited, Hyderabad dated 30-07-1986. The Appeal preferred by the 2nd respondent to the Board of Directors was also dismissed. Feeling aggrieved, the 2nd respondent filed an application before the Labour Court under Section 2-A(2) of the I.D. Act in April, 1993.

It is to be noted that in the meanwhile there was a further amendment to the A.P. Cooperative Societies Act, 1964 by virtue of which Section 114-A was omitted, thereby abolishing the Centralised Service Cadre. As per Section 11 of the said Amendment Act No.1 of 1987, all the Primary Agricultural Development Banks stood abolished with effect from 01-04-1987 and all rights and assets vesting in the said Banks and all liabilities against them devolved on the Cooperative Central Bank of the District concerned. It is also relevant to note that as per Rule 73 of the A.P. Cooperative Societies Rules as amended by G.O.Ms.No.132, dated 03-03-1993, the Managing Committee of the District Cooperative Central Bank or the Officer authorized by it shall have powers over the employees of the erstwhile Primary Agricultural Development Banks in respect of disciplinary action, transfers, promotions and etc., as per District Cooperative Central Bank Employees Service Regulations. That apart, with a view to integrate the apex level credit agencies by merger of A.P. Cooperative Central Agricultural Development Bank with the A.P. State Cooperative Bank Limited, the Legislature issued A.P. Single Window Cooperative Credit Structure at State Level Act, 1994 (Act.No.14 of 1994), by virtue of which, the A.P. Central Cooperative Agricultural Development Bank stood abolished.

It is relevant to note that the 2nd respondent filed I.D.No.124 of 1993 making the A.P. Cooperative Central Agricultural Development Bank Limited, Hyderabad and the Agricultural Development Bank, Armoor as party respondents. In the circumstances, Soon after the enactment of Act No.14 of 1994, I.A.No.95 of 1995 was filed on behalf of the A.P. Cooperative Central Agricultural Development Bank stating that by virtue of A.P. Act 14 of 1994 whereunder the A.P. Cooperative Central Agricultural Development Bank was abolished, the proceedings instituted by the 2nd respondent against a non-existing institution are not maintainable and therefore I.D.No.124 of 1993 is liable to be dismissed. The 2nd respondent filed a counter-affidavit contesting the

said application. The Labour Court by order dated 02-12-1995 closed the said I.A.No.95 of 1995 observing that the question raised in the said application will be decided in the main I.D. However, the impugned Award dated 23-11-1996 was passed without considering the issue raised in I.A.No.95 of 1995.

The learned Counsel for the petitioner (A.P. State Cooperative Bank) vehemently contended that since the A.P. Cooperative Central Agricultural Development Bank is not in existence, the objection raised in I.A.No.95 of 1995 as to the maintainability of the proceedings is relevant for determining the issue in question and the Labour Court grievously erred in not considering the said crucial issue and disposing of I.D.No.124 of 1993 directing reinstatement of the petitioner into service.

I find force in the contention of the learned Counsel for the petitioner. A perusal of the impugned Award shows that except referring to the submissions made by both the parties, the Labour Court did not go into the merits of the case. It is also pertinent to note that the second respondent did not choose to produce any evidence before the Labour Court either oral or documentary. On the other hand, on behalf of the Management, 29 documents were marked which include the charge-memo, the enquiry report, the statements of witnesses and the explanation of the 2nd respondent to the show-cause notice dated 17-05-1986 with regard to the proposed punishment. The Labour Court did not consider any one of the said documents nor even record a finding that the conclusions of the enquiry officer and the disciplinary authority are unsustainable.

The law is well settled that unless the Labour Court goes into the merits and on reappreciation of the evidence adduced during the domestic enquiry satisfies itself that the misconduct as alleged was not established, it is not possible to come to a conclusion that the finding

recorded during the domestic enquiry was not correct. Even where the validity of domestic enquiry was upheld, the Labour Court is duty-bound to reappreciate the evidence and give a finding as to the alleged misconduct. Interference with the punishment awarded by the Management without making an independent review of the case is impermissible and cannot be sustained.

Hence, as rightly contended by the learned Counsel for the petitioner the impugned Award interfering with the punishment awarded without assigning any reasons suffers from an error apparent on the face of the record and liable to be set aside on that ground alone.

However, the learned Counsel for the 2nd respondent / workman while placing reliance upon certain observations made in page-8 of the impugned Award, contended that a clear finding has been recorded by the Labour Court that the order of dismissal dated 30-07-1986 was without jurisdiction and therefore the direction for reinstatement is justified and does not warrant any interference. I am unable to appreciate the said contention. On a perusal of the impugned Award, the argument advanced before the Labour Court by the Counsel for the workman appears to be that the Managing Director of the A.P. Cooperative Central Agricultural Development Bank Limited, who passed the order of dismissal dated 30-07-1986 had no power or authority in view of the deletion of Sections 114-A & 114-B of the A.P. Cooperative Societies Act, thereby abolishing the Centralised Service Cadre. It was contended that the 2nd respondent who was working as a Supervisor at Koonavaram at the relevant point of time was under the disciplinary control of the President / Chairman or the Committee of the Primary Agricultural Development Bank and that the bye-laws of the Primary Bank alone are applicable to him, but not the regulations governing the Centralised Service. The Labour Court at page-8 of the impugned Award observed that as per sub-rule (3) of Rule-70 the Primary Agricultural Development Bank was clothed with the power of

disciplinary action both in the case of action initiated by the Primary Agricultural Development Bank and also in respect of cases which were initiated prior to the abolition of the Centralised Service and that as the workman ceased to be a member of Centralised Service, the Managing Director had no jurisdiction to exercise the disciplinary powers and as such the impugned order of dismissal was without authority and contrary to the provisions of the Act and the Rules made thereunder.

As explained above, by virtue of the Amendment Act 51 of 1976, Section 114-A was inserted empowering the Board to constitute centralized service of certain categories of employees of the Agricultural Development Banks. It is clear from G.O.Ms.No.409, Food & Agriculture (Coop. IV), dated 29-06-1979 whereunder Rule 70 of the A.P. Cooperative Society Rules was amended, the post of Supervisor was also included in the Centralised Service. Admittedly, the 2nd respondent was absorbed in the Centralised Service by proceedings dated 26-08-1981 with effect from 01-07-1980. Thus, he was governed by the Regulations governing the Service Conditions of the employees of the Centralised Service and he was under the disciplinary control of the Managing Director of A.P. Cooperative Central Agricultural Development Bank with effect from 01-07-1980. The irregularities in disbursement of loans alleged to be committed by him at Koonavaram Agricultural Development Bank took place during the year 1981. The charge-memo was served on him on 02-08-1984 which ultimately resulted in the dismissal of service on 30-07-1986, whereas the Centralised Service was abolished with effect from 01-04-1987 under the Amendment Act No.1 of 1987. Therefore, the disciplinary proceedings were rightly initiated by the Managing Director of A.P. Cooperative Central Agricultural Development Bank in terms of the Regulations governing the Service Conditions of the employees of the Agricultural Development Banks under the Centralised Service Cadre and the order of dismissal was rightly passed by the Managing Director who was the competent authority under Rule 70 (4) of the A.P.

Cooperative Society Rules as amended under G.O.Ms.No.409, dated 29-06-1979. Hence, even assuming that a finding was recorded by the Labour Court that the order of dismissal was without jurisdiction, I am of the view that the said finding is erroneous and cannot be sustained.

For the aforesaid reasons, the impugned Award which was passed without application of mind to the material on record is liable to be set aside and the matter requires reconsideration on merits in accordance with law.

Accordingly the impugned Award is set aside and the matter is remitted back to the Labour Court for consideration afresh and to pass appropriate orders in accordance with law within a period of six months from the date of receipt of a copy of this order. It is made clear that the Labour Court shall not take any fresh evidence in relation to the matter and shall pass appropriate orders on consideration of the material already on record, ofcourse after hearing both the parties on all the issues raised including the objection raised in I.A.No.95 of 1995, as to the maintainability of the proceedings.

Since pending this Writ Petition, the 2nd respondent died and his legal representatives were brought on record as respondents 4 to 8, it is made clear that the respondents 4 to 8 herein shall be added as petitioners in I.D.No.124 of 1993 and they shall be permitted to prosecute the proceedings before the Labour Court.

In the result, W.P.No.12214 of 1997 is allowed and W.P.No.32810 of 1997 is dismissed. There shall be no order as to costs.

18th June, 2004.
gbs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To
1 The Presiding Officer Labour Court-II
Chandra Vihar, MJ Road, Hyderabad
2 The Managing Director, A.P.State Coop. Bank Ltd.,
4-1-441, Troop Bazar, Hyderabad
3 The Nizamabad District Coop. Central Bank Nizamabad,
Nizamabad Dist
rep.by its Chairman

4.2CCs to G.P. for Labour, High Court Buildings, Hyderabad.(OUT)
2.2CD copies